

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DEMONE ROYELIO SMITH,

Case No. 12-CV-0163 (PJS/JSM)

Plaintiff,

v.

ORDER

J. BUCK, City of Brooklyn Park Police
Officer,

Defendant.

Demone Royelio Smith, pro se.

Stephanie A. Angolkar and Jon K. Iverson, IVERSON REUVERS CONDON, for
defendant.

This matter is before the Court on the motion of plaintiff Demone Smith for leave to
appeal *in forma pauperis* (“IFP”). Smith’s motion is granted, and he is ordered to pay an initial
partial filing fee of \$33.29.

Because Smith is a “prisoner,” *see* 28 U.S.C. § 1915(h), the \$455 filing fee for his appeal
cannot be waived altogether. 28 U.S.C. § 1915(b); *Henderson v. Norris*, 129 F.3d 481, 483-84
(8th Cir. 1997) (per curiam). Instead, an order granting IFP status to a prisoner-appellant merely
permits him to pay the filing fee for his appeal in installments, rather than all in advance. *In re*
Tyler, 110 F.3d 528, 529-30 (8th Cir. 1997). A prisoner is required to pay an “initial partial
filing fee” upon the commencement of an action or appeal, and he is required to pay the
remaining balance of the fee through periodic deductions from his prison trust account. 28
U.S.C. § 1915(b). If the prisoner has no assets and no means to pay the initial partial fee,
however, the entire fee is collected according to the installment plan in § 1915(b)(2).
Henderson, 129 F.3d at 483-84.

Based on the disclosures in his IFP application, Smith is financially eligible for IFP status, and he owes an initial partial filing fee of \$33.29. Under § 1915(b), the initial partial filing fee is 20 percent of the greater of the average monthly deposits or the average monthly balance in the prisoner's trust account over the preceding six months. According to Smith's trust-account statement, Smith has had average monthly deposits of \$166.45 in the six-month period preceding the filing of his notice of appeal.¹ Smith claims that the average monthly balance is incorrect, but in any event it appears that the average deposits exceed the average balance. Therefore, Smith must pay an initial partial filing fee of \$33.29, and he will be required to pay the balance of the fee over time in accordance with 28 U.S.C. § 1915(b)(2).

The Court remains satisfied that Smith's lawsuit was properly dismissed and that he has no meritorious grounds for an appeal. But the Court will not deem Smith's appeal to be "frivolous" as that term has been defined by the Supreme Court. Therefore, Smith's appeal is found to be taken "in good faith" for purposes of 28 U.S.C. § 1915(a)(3).

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for leave to appeal *in forma pauperis* [ECF No. 62] is GRANTED.
2. Plaintiff is ordered to pay an initial partial filing fee of at least \$33.29.

¹The Court notes that the "Certificate of Authorized Prison Official" states that Smith has average monthly deposits of \$998.67. Based on a printed summary of Smith's account, however, it appears that \$998.67 represents the *total* deposits over the preceding six months. His average monthly deposit would therefore be \$166.45.

3. The remaining balance of the filing fee must be paid over time in accordance with 28 U.S.C. § 1915(b)(2).
4. A copy of this order shall be sent to plaintiff and to prison officials at the institution where plaintiff is currently confined.

Dated: May 22, 2013

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge